

10 May 2000

Government Prices Oversight Commission
GPO Box 770
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Response by the Rail, Tram and Bus Union – Tasmania Branch into an Investigation of Metro Pricing Policies

1. The Australian Rail, Tram and Bus IndustryUnion (Trading as the Rail, Tram and Bus Union) is a union of 36,000 employees in the Rail, Tram and Bus Industry. The Union and its predecessor (AT&MOEA) has been involved since the early 20th Century in providing public bus services in Perth, Adelaide, Melbourne, Sydney, Brisbane and various locations in Tasmania. The RTBU also covers both public and private operators of rail, light rail and tram services in all States. The RTBU is the major union in the public bus industry covering some 75% to 85% of the whole workforce.
2. The RTBU is affiliated to the ACTU and has been closely involved in the development of trade union policy on competition policy and has been closely involved in the application of competitive entry into urban bus industry and is able from first hand experience to comment on development in this industry.
3. The RTBU is affiliated to the International Transport Federation which has affiliates in nearly 100 countries, several million members and monitors privatisation, contracting out and deregulation across the world.

Investigation of Metro Pricing Policies

The RTBU welcomes the opportunity given by the Tribunal to make submissions.

The RTBU takes issues with finding of the final report 1997 in that:

- (a) The Tribunal challenged outcomes on the Federal Industrial Commission in its outcomes that reflect the Federal Regulatory Regime.
- (b) The use of a benchmarking analysis that was submitted as a confidential document without the ability of the RTBU to test its transparency.

- (c) Information from that Australian Bus Benchmarking Project 1994-1995 being used to analyse Metro bus operators performance against eight unknown private operators covering 10 operations.
- (d) The use of the Transport Privatisation outcomes without examination of the WA Auditor Generals condemnation into the downside and whole of costs to Government of this exercise

Further the RTBU finds this practise replicated in the draft report 2000 at 4.3 Benchmarking Studies where again a commercial ‘in confidence’ report is accepted and not subject to public scrutiny. Metro being a public provider is open to public scrutiny.

Unlike private companies who are not subject to the same public scrutiny are able to utilise cross subsidise as a legitimate business practice.

Without public declaration any comparison of commercial in confidence analysis would be possibly detrimental to a public provider.

The RTBU therefore draws the Tribunals attention to decisions of the Federal Court in relation to its previous findings on tendering out are now possibly wrong at law and subject to challenge, as has happened in the following cases

- North Western Health Care Network (see attachment 1).
- Stellar Call Centres Pty Ltd 1999.

Metro employees are covered by Federal awards subject to the Federal Workplace Relations Act 1996 and are therefore covered by the provisions of Sections 170 MB (2). Further the RTBU and Transport Workers Union have jointly instigated an action in the Federal Court against one of the successful Adelaide tenderers, Transit. This matter has been heard and subject to a decision of Judge Mansfield of the Federal Court in early June.

The RTBU notes that the Government Prices Oversight Commission has been set up under the National Competition Principles Regime as agreed by Australian Governments.

1. The Independent Committee of Inquiry into National Competition Policy (Hilmer Report) proposed a combination of laws, principles and processes as well as two key institutions, to review the structure of all significant GBE’s, corporatise them, break them into monopoly and non-monopoly units and to introduce competition in the non-monopoly sections and third party access to publicly owned infrastructure.
2. The Council of Australian Governments at their meeting in Hobart in February 1994 agreed to the principles of competition policy set out in the report of the National Competition Policy review.
3. The CPA sets out *inter alia*
 - (3) Without limiting the matters that this Agreement calls:
 - (a) For the benefits of a particular policy or course of action to be balanced against the costs of the policy or course of action; or

- (b) For the merits or appropriateness of a particular policy or course of action to be determined; or
- (c) For an assessment of the most effective means of achieving policy objective.

The following matters shall, where relevant, be taken in account:

- (d) Government legislation and policies relating to ecologically sustainable development;
- (e) Social welfare and equity consideration including community service obligations;
- (f) Government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;
- (g) Economic and regional development including employment and investment growth;
- (h) The interests of consumers generally or of a class of consumers;
- (i) The competitiveness of Australian businesses and;
- (j) The efficient allocation of resources.

This agreement is neutral with respect to the nature and form of ownership of business enterprises. It is not intended to promote public or private ownership.

4. Competitive neutrality is one of six agreed principles, along with prices oversight, structural reform of public monopolies, a legislative review, third party access to significant infrastructure and application of local government.

Competition Neutrality Issues

1. The Hilmer Report argued that as government business becomes more efficient and more commercial, there is a new set of issues for competition policy, particularly where those businesses continue to enjoy net advantages vis-à-vis private operators.

“As competition of this kind is likely to increase over the next decade, there is a growing need to find some mechanism to deal with ‘competitive neutrality’ concerns. The Hilmer Report recommended that government must ‘comply with certain competitive neutrality requirements when competitive with private firms, with some distinction made between government business competing in their traditional area and those competing in new markets’. (Hilmer Report, Executive Overview, pages 20-21).

2. In many overseas countries legislation exists which ensures workers keep their jobs if the public provider is privatised, contracted out and existing wages and conditions are transferred to the new operator, (which is being supported by the Federal Court in recent findings as previously outlined). Additionally see EEC Social Legislation and the UK Transfer of Undertakings Protection of Employment (TUPE) Act.
3. The Trade Union Movement and consumer organisations have argued that the application of competitive neutrality principles must recognise that GTE’s have competing disadvantages compared to private sector and that these should be taken into account to ensure that a GTE has no net disadvantage due to government ownership. This has been recognised in the ‘NSW Government Policy Statement on the Application of Competitive Neutrality’. (see attachment 2).

4. The RTBU is of the view that governments in respect of competitive neutrality must recognise, evaluate and take action on the following matters:

- The impact of industrial awards on the wages and conditions applying in the public sector, compared to the awards in the private sector.
- The better superannuation regimes in the public sector.
- Higher public safety and occupational health and safety regimes in the public sector.
- Higher parliamentary, ICAC and FOI reporting requirements in the public sector.
- Higher standards of equal opportunity legislation in the public sector.
- Impact of public benefit policies imposed on public transport, such as use of Treasury Banking services, support for state policy on apprentice training and role in state disaster plans.

In conclusion the RTBU requests the Commission to take into account the matters raised, especially Section 170 MB (2) submissions, for addressing in the Final Report.

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Branch Secretary Tasmania